

House of Representatives

Supplementary Order Paper

Tuesday, 10 March 2020

Abortion Legislation Bill

Proposed amendments

Chris Penk, in Committee, to move the following amendments:

Clause 7

In *clause 7, new section 19*, replace *subsections (2) and (3)* (page 9, lines 3 to 17) with:

- (2) A is not under any obligation to provide, or to assist with providing, to B the service requested if A objects on the ground of conscience to providing the service.
- (3) If A objects on the ground of conscience to providing, or to assisting with providing, to B the service requested, A must tell B of the conscientious objection at the earliest opportunity.
- (4) When this section applies, A must inform B that they can obtain the service from another health practitioner.
- (5) **Subsections (2) and (3)** apply despite any legal obligation to which A is subject, regardless of how the legal obligation arises.

In *clause 7*, replace *new section 20* (page 9, line 18 to page 10, line 25) with:

- 20 Restriction on employment discrimination on the ground of conscience**
- (1) An employer must not—
 - (a) deny to an employee, or an applicant for employment, any employment, accommodation, good, service, right, title, privilege, or benefit merely because the employee objects on the ground of conscience to providing any assistance referred to in **section 19(1)**; or

- (b) provide or grant to an employee, or an applicant for employment, any employment accommodation, good, service, right, title, privilege, or benefit conditional upon the employee providing or agreeing to provide any assistance referred to in **section 19(1)**.
- (2) A person who suffers any loss by reason of any breach of **subsection (1)** is entitled to recover damages from the person responsible for that breach.
- (3) An applicant or employee who alleges that an employer has contravened this section may make a complaint under the Human Rights Act 1993 as if the complaint were a complaint of unlawful discrimination under section 22 of that Act.
- (4) If an applicant or employee who alleges that an employer has contravened this section is entitled to pursue a personal grievance under the Employment Relations Act 2000, the applicant or employee may take either, but not both, of the following steps:
 - (a) apply to the Employment Relations Authority for the resolution of the grievance under that Act; or
 - (b) make a complaint under the Human Rights Act 1993.

Explanatory note

This Supplementary Order Paper amends *clause 7* of the Abortion Legislation Bill by amending *new section 19* and replacing *new section 20*, relating to conscientious objection and provisions related to employment relations. The wording for this amendment has been taken from section 8 of the End of Life Choice Act 2019, which addresses a comparable matter of conscientious objection.

The Abortion Legislation Bill maintains the current standard that a person with “a conscientious objection to providing, or to assisting with providing, [an abortion]” is not required to undertake or assist with the procedure and must tell the woman of their objection “at the earliest opportunity”. However, the Bill goes further than the current law in its requirement that a conscientious objector must “tell [the woman] how to access the list of abortion service providers” maintained by the Ministry of Health.

In 2010, the High Court ruled against the Medical Council when similar provisions were incorporated in a Council’s draft statement on how doctors who hold a conscientious objection to abortion must respond to a patient requesting an abortion. The judge ruled that when a woman requests abortion, the proper course for a doctor who has a conscientious objection is to decline to embark upon the process, and inform the woman she can obtain the service from another health practitioner or from a family planning clinic. Justice MacKenzie claimed, “this must be seen as a maximum obligation [of the Health Practitioners Competence Assurance Act 2003], and not one which may be supplemented by the imposition of professional standards.” Equally, Parlia-

ment must take into account this ruling, and maintain a judicious standard on medical practitioners on issues of conscience.

The Bill also amends the current law to allow an employer that provides any of the health services specified in *new section 19(1)* to discriminate on the basis of conscientious objection, contrary to the right not to be discriminated against on the basis of religious belief, ethical belief, or political opinion. The Human Rights Act 1993 prohibits discrimination in the employment application process. The Bill provides that it will be a legitimate part of the employment process for an employer that provides any of the health services specified in *new section 19(1)* to ask a job applicant questions about whether they conscientiously object to providing an abortion.

Further, the Bill provides that if such an employer considers that an employee's (or job applicant's) conscientious objection would "unreasonably disrupt the employer's activities", the employer can take action, including refusing to hire an applicant, offering inferior terms of employment, or terminating the employment of a medical practitioner. Troublingly, the Bill does not restrict this limitation to the health practitioner. It provides that an employee or job applicant "who is qualified for work in connection with the provision of those services" may be lawfully discriminated against. Depending on the court's interpretation of "qualified", this arguably extends the reach of this section to include all staff connected to the provision of the abortion service.

This Supplementary Order Paper seeks to maintain the judicious standard that is currently in place, reiterating the recently accepted stance concerning conscientious objection seen in the End of Life Choice Act 2019.